

**INFORMATION AND INSTRUCTIONS FOR FILING A PETITION FOR
WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY
PURSUANT TO 28 U.S.C. § 2254 IN THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF ARIZONA**

I. General Information About the Habeas Corpus Form:

A. The Form. The petition for writ of habeas corpus by a person in state custody form is designed to help prisoners prepare a petition challenging their custody on the grounds that their state conviction or sentence violates the United States Constitution or other federal law. Local Rule of Civil Procedure 3.5(a) requires that habeas corpus petitions be filed on the court-approved form. Your petition must be typewritten or legibly handwritten. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. **This form should not be used in death penalty cases.**

B. Your Signature. The petition must be signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. Your signature must be an original signature, not a photocopy.

C. The Filing Fee. Your petition for writ of habeas corpus must be accompanied by the \$5.00 filing fee (checks or money orders should be made payable to the Clerk of the Court). If you are unable to pay the filing fee when the petition is filed, you may request permission to proceed *in forma pauperis* by completing and signing the Application to Proceed *In Forma Pauperis* provided with the petition form. You must have an official at the prison or jail complete the certificate at the bottom of the application form. If the amount of money in your prison account exceeds \$25.00, you must pay the \$5.00 filing fee. See LRCiv 3.5(b).

D. Court Divisions. If you are challenging a state judgment of conviction entered in Maricopa, Pinal, Yuma, La Paz, or Gila county, you should file your petition in the Phoenix Division of the court. If you are challenging a state judgment of conviction entered in Apache, Navajo, Coconino, Mohave, or Yavapai county, you should file your petition in the Prescott Division of the court. If you are challenging a state judgment of conviction entered in Pima, Cochise, Santa Cruz, Graham, or Greenlee county, you should file your petition in the Tucson Division of the court. See LRCiv 5.1(b) and 77.1(a).

You should mail THE ORIGINAL AND TWO COPIES of your petition with the \$5.00 filing fee or the application to proceed *in forma pauperis* to:

Phoenix & Prescott Divisions:

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 321
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

E. Certificate of Service on Respondents. You must furnish the respondents or their attorney with a copy of any document you submit to the court (except the initial petition and application

to proceed *in forma pauperis*). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial petition and application for leave to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the respondents or their attorney and the address to which it was mailed. Any document received by the court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this ___ day of ___ (month) ___, (year) ___, to:

Name: _____

Address: _____

Attorney for Defendant(s)/Respondent(s)

(Signature)

F. Original and Judge's Copy. You must file an original plus **two** copies of your petition. After the petition is filed, you must furnish an original and **one** copy of any other document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original.

G. Exhibits. You should attach a copy of all final state court written decisions and all written decisions by the Ninth Circuit Court of Appeals regarding the conviction you are challenging. You should **not** submit any other exhibits with the petition. Instead, the relevant information should be paraphrased in the petition.

H. Change of Address. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.

I. Amended Petition. If you need to change any of the information in the initial petition, you must file an amended petition. The amended petition must be written on the court-approved petition for habeas corpus form. Local Rule of Civil Procedure 15.1(a)(2) prohibits any amended pleading from referencing any prior pleading. Further, any grounds not included in the amended petition are considered dismissed.

J. Letters and Motions. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Habeas Corpus Petition Form:

HEADING:

1. Your Name and Address. Print your name, prison or jail inmate number, and mailing address on the lines provided in the upper left hand corner of the form.

2. Petitioner. Print your full name on the first line of the caption.
3. Respondent. Print the name of the director of the department of corrections, or the warden of the institution where you are confined, or some other official who has responsibility for your current custody.
4. Additional Respondent. Print the name of the state where the judgment of conviction you are challenging was entered on the blank line below the heading “THE ATTORNEY GENERAL OF THE STATE OF.”

PART A. JUDGMENT OF CONVICTION:

Only one state judgment of conviction may be challenged in a single petition for writ of habeas corpus. Multiple counts which resulted in a single judgment of conviction may be challenged in the same petition for writ of habeas corpus. If you wish to challenge more than one judgment, however, you must file separate habeas corpus petitions for each judgment. Print all of the requested information regarding your judgment of conviction and sentence on the spaces provided.

Part B. APPEALS:

Answer each of the questions regarding your direct appeals in the state courts. If you filed appeals in the state courts, you must provide the requested information for each level of appeal on the spaces provided. Attach a copy of all written decisions on your appeal.

Part C. FIRST STATE POST-CONVICTION PROCEEDINGS:

Most states provide a specific method for challenging a conviction in the state courts after direct appeals have been completed. In Arizona the method is a petition for post-conviction relief pursuant to Rule 32 of the Arizona Rules of Criminal Procedure. Answer each of the three questions regarding any first post-conviction relief proceedings you had in the state courts. If you sought review of your petition in the state appellate courts, you must provide the requested information for each level of appeal on the spaces provided. Attach a copy of all written decisions on your petition and appeal.

Part D. SECOND STATE POST-CONVICTION PROCEEDINGS:

Answer each of the three questions regarding any second post-conviction relief proceedings you had in the state courts. If you sought review of your second petition in the state appellate courts, you must provide the requested information for each level of appeal on the spaces provided. Attach a copy of all written decisions on your second petition and appeal.

Part E. OTHER STATE PROCEEDINGS:

The Arizona courts normally permit a defendant to challenge his or her conviction or sentence only by filing a direct appeal or a Rule 32 petition for post-conviction relief. There may, however, be a few very narrow exceptions that permit a challenge by filing a “special action” or a habeas corpus petition in the state courts. Answer each of the three questions regarding any such proceedings you had in the state courts. Attach a copy of all written

decisions on these proceedings.

Part F. FEDERAL PROCEEDINGS:

If this is not your first federal habeas corpus petition challenging this conviction, answer each of the seven questions regarding your prior federal petition. If your previous federal petition was denied, you must obtain permission from the Ninth Circuit Court of Appeals before you may file a second petition in the federal courts. If the court of appeals has granted you permission to file a successive petition, attach a copy of the court's written decision.

Part G. PENDING PROCEEDINGS:

If you have an appeal, petition, or other proceedings currently pending regarding the conviction you are challenging in this petition, answer each of the three questions in the spaces provided. Ordinarily, you may not file a federal petition for writ of habeas corpus if you have an appeal still pending in the state courts.

Part H. REPRESENTATION:

Print the name of the attorney who represented you at each stage of your state court criminal proceedings. If you represented yourself at any stage, check the box marked "Pro Se."

Part I. OTHER SENTENCES:

If you have any other sentences to serve aside from the sentence imposed by the judgment you are challenging in this petition, answer each of the four questions regarding your other convictions and sentences.

CLAIMS FOR RELIEF:

State concisely every ground for which you claim that your conviction or sentence violates the United States Constitution or other federal law. Your claims should not be based on state law. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and supporting facts. **You must raise all grounds for relief that relate to this conviction or sentence. Any grounds not raised in this petition will likely be barred from being raised in any subsequent federal action.**

The following list of the most frequently raised grounds for relief in habeas corpus proceedings is provided for your information only. You may raise any other federal grounds if you have exhausted all your state court remedies with respect to those grounds.

1. Conviction obtained by a plea of guilty which was unlawfully induced or not made voluntarily with the understanding of the nature of the charge or the consequences of the plea.
2. Conviction obtained by use of a coerced confession.
3. Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure (where the state did not provide a full and fair hearing on the Fourth Amendment claim).
4. Conviction obtained by use of evidence gained pursuant to an unlawful arrest (where the state did not provide a full and fair hearing on the Fourth Amendment claim).
5. Conviction obtained by a violation of the privilege against self-incrimination.

6. Conviction obtained by the unconstitutional failure of the prosecution to disclose evidence favorable to the defendant.
7. Conviction obtained by a violation of the protection against double jeopardy.
8. Conviction obtained by action of a grand or petit jury which was unconstitutionally selected or impaneled.
9. Denial of effective assistance of trial counsel or counsel on direct appeal in the state courts.
10. Denial of right of appeal.

Parts G-M GROUNDS:

The form includes space for only four grounds. If you are alleging more than four grounds, answer all of the questions for each additional ground on a separate page.

1. You must identify which constitutional right or other federal law was violated. **You may allege the violation of only one federal right per ground.** Your claim should not be based on state law.
2. Supporting facts. After you have identified which federal right was violated, you need to state the supporting facts. Be as specific as possible. Tell your story briefly without citing cases or law.
3. Exhaustion. **In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court. If you did not fairly present each of your grounds to the state's highest court, your petition may be dismissed.** If you did not present one or more of your grounds to the state's highest court, explain why you did not.

SIGNATURE:

You must sign your name and print the date you signed the petition. Your signature must be an original signature, not a photocopy. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your petition being stricken or dismissed by the court. All questions must be answered concisely in the proper space on the form. If needed, you may attach additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the petition is being continued and number all pages.